

**International Brotherhood of Electrical Workers, Local 211 and Sammons Communications of New Jersey, Inc. and International Brotherhood of Electrical Workers, Local 1448.** Case 4-CD-610

20 July 1984

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 21 September 1983 by the Employer Sammons alleging that the Respondent, Local 211, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 1448. The hearing was held 7 November 1983 before Hearing Officer Michael P. Berger.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record,<sup>1</sup> the Board makes the following findings.

### I. JURISDICTION

The Company, a New Jersey corporation, with offices in Pleasantville, New Jersey, is engaged in installing and serving cable television systems. During the past year, it had a gross volume of business in excess of \$500,000 and purchased goods and services in excess of \$50,000 directly from suppliers outside the State of New Jersey. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 211 and Local 1448 are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

#### A. Background and Facts of Dispute

The Employer contracted to install a two-way cable communication system to provide data transmission for Spencer Gifts, Inc. (Spencer Gifts) at Spencer Gifts' building under construction at

Blackhorse Pike in Egg Harbor Township, New Jersey. The Employer has a collective-bargaining agreement with Local 1448. Local 211 does not represent the Employer's employees. Local 211 represents employees of R & S Electric Co. (R & S Electric), the general contractor's electrical subcontractor on the Spencer Gifts construction site as well as the Employer's subcontractor installing cable conduit inside the building.

#### B. Work in Dispute

The disputed work involves conduit installation for Sammons Communications of New Jersey, Inc., across the proposed parking lot at the premises of Spencer Gifts located on Blackhorse Pike in Egg Harbor Township, New Jersey.

#### C. Contentions of the Parties

The Employer contends the disputed work's assignment to employees represented by Local 1448 is consistent with its past practice and contractual obligations. The Employer prefers that the disputed work be assigned to its employees represented by Local 1448 rather than to nonemployees represented by Local 211 based on economy, efficiency, and relative skill considerations.

Local 1448 contends the Employer is obligated to assign the disputed work to the employees it represents based on its collective-bargaining agreement and the Employer's past practice. Local 1448 also contends that the employees it represents have more experience and skill in performing the disputed work than the employees represented by Local 211, and the employees it represents can perform the disputed work economically and efficiently.

Local 211 contends that the disputed work should be assigned to the employees it represents based on economy, efficiency, and relative skill considerations and on the area practice.

#### D. Applicability of the Statute

About 20 September 1983 the Employer assigned its employee Patrick Meenan to lay conduit across the Spencer Gifts construction site's parking lot. Before Meenan started the work, Billy Crew, job foreman for R & S Electric and Local 211 shop steward, asked to see the union cards and dues receipts of Meenan and the employees of Kline Construction (Kline), the Employer's subcontractor hired to open and back fill trenches. Crew, after learning that Meenan was a Local 1448 member, asked him to wait for Local 211's business agent. Crew told Meenan that, if he started the work, the electricians represented by Local 211 would walk

<sup>1</sup> Respondent Local 211's request to reopen the record is denied as lacking in merit. The proffered evidence is dated well in advance of the hearing and, on its face, does not appear to relate to the disputed work. Furthermore, there is no evidence that the Employer and Local 1448 have agreed to the disputed work's reassignment to employees Local 211 represents.

off the job. Meenan started no work that day. The following day Kline employees dug an 80- to 100-foot trench. Once again Crew claimed the work for employees represented by Local 211 and said they would walk off the job. Meenan laid most of the conduit over the weekend when there were no Local 211 people present, but did not finish as a result of a machinery breakdown; Kline employees were unable to dig the trench's last 25 to 30 feet. The following Monday morning Local 211 picketed the jobsite. No Sammons employees crossed the picket line.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Certification and collective-bargaining agreement

The parties stipulated that the Employer is not failing to conform to any Board certification determining the bargaining representative for the employees performing the work in dispute. The collective-bargaining contract between the Employer and Local 1448 provides, as follows:

The work covered by this Agreement to be performed only by employees, shall include all work in connection with the installation, testing, operation, maintenance and repair of cable-television systems, and their associated apparatus (including the installation of all coaxial cable) by means of which signal is applied to the amplification, transmission and distribution of video and sound radio-frequency signals.

It also provides that Local 1448 is the exclusive representative of the employees covered by the agreement's terms. Local 211 has no collective-bar-

gaining agreement with the Employer. Therefore, we find that this factor favors assignment of the disputed work to the employees represented by Local 1448.

##### 2. Company preference, past practice, and area practice

The Employer prefers to use its own employees and almost always does so both locally and nationally. The record shows that other area cable companies use their own employees.

Local 211 attempted to show that the employees it represents performed virtually all the Atlantic County, New Jersey area conduit work. We find such evidence irrelevant because it involves work done in a different franchise area by another cable company's employees. Sammons is franchised only in Egg Harbor Township. Employees represented by Local 211 have done no Egg Harbor Township cable conduit work. We find therefore that these factors favor the disputed work's assignment to employees represented by Local 1448.

##### 3. Relative skills

Coaxial cable's physical properties differ from those of electrical wires. Knowledge of the physical properties is required when laying cable conduit. The employees represented by Local 1448 work exclusively with cable and cable conduit. The employees represented by Local 211 are primarily electricians. Although the Local 211 apprenticeship training course does cover cable and related conduit work, the employees represented by Local 211 do not have the consistent daily experience in such work that the employees represented by Local 1448 have. Therefore, we find that the skill factor favors the disputed work's assignment to the employees represented by Local 1448.

##### 4. Economy and efficiency of operation

No party disputes the Employer's entitlement under its municipal franchises and permits to lay the conduit under the public streets, and no party contends that the employees represented by Local 1448 should not perform that work and the work involving running the cable itself through the entire system. If the disputed work involving laying conduit across the parking lot were assigned to the employees represented by Local 211, it would mean that the Employer's employees would run conduit and cable from the pole under the street to Spencer Gifts' private property line and then have to wait for employees represented by Local 211 to lay the conduit across the parking lot to the building before the Employer's employees would be able to complete running the cable to the

building. Such an agreement would likely cause coordination and timing problems resulting in inefficiency for all concerned. Thus, we find that this factor favors the disputed work's assignment to employees represented by Local 1448.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 1448 are entitled to perform the work in dispute. We reach this conclusion relying on Local 1448's collective-bargaining agreement with the Employer, the Employer's preference and past practice, the area practice, and economy, efficiency, and relative skill considerations. In making this determination, we are awarding the work to employees represented by Local 1448, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Sammons Communications of New Jersey, Inc., represented by International Brotherhood of Electrical Workers, Local 1448, are entitled to perform conduit installation across the Spencer Gifts construction site parking lot located on Blackhorse Pike at Egg Harbor Township, New Jersey.

2. International Brotherhood of Electrical Workers, Local 211, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Sammons Communications of New Jersey, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local 211, shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.